

17 Before the Court is defendants' "Motion for Stay Pending Reexamination of the
18 Patent-in-Suit" and "Motion to Change Time Pursuant to Local Rule 6-3," both filed
19 February 19, 2008. Plaintiff has filed opposition to the motion to change time, to which
20 defendants have replied. Having read and considered the motion to stay, the Court finds
21 no opposition is necessary, and rules as follows.¹

22 Three weeks before trial of the above-titled cause is set to commence, defendants
23 filed the instant motion to stay the trial in light of defendants' having recently filed with the
24 Patent and Trademark Office ("PTO") a request for reexamination of one of the two
25 patents-at-issue herein.

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²⁸ ¹The motion to change time, by which defendants seek to have the motion to stay heard on shortened time, is DENIED as moot.

1 “Parties should not be permitted to abuse the reexamination process by applying for
2 reexamination after protracted, expensive discovery or trial preparation.” Xerox Corp. v.
3 3Com Corp., 69 F. Supp. 2d 404, 407 (W.D. N.Y. 1999.) Indeed, a “clear rule [has]
4 developed in cases considering stays that, where [] discovery has commenced, claim
5 construction has been briefed, and dispositive motions have been filed and disposed of,
6 courts should not grant stays for reexamination before the PTO.” See Fresenius Medical
7 Care Holdings, Inc. v. Baxter Int’l, 2007 WL 1655625 (N.D. Cal. 2007). Such “clear rule” is
8 wholly applicable herein, particularly given that discovery has been completed, no claims
9 remain to be construed, and no pretrial matters remain pending, other than the Court’s
10 consideration of fully-briefed motions in limine. Further, defendants have not pursued any
11 theory of invalidity herein. Moreover, the opinion on which defendants intend to rely in
12 seeking reconsideration was decided in April 2007, and defendants fail to set forth any
13 reason, let alone good cause, for their having delayed the filing of a request for
14 reexamination until essentially the eve of trial.

15 Accordingly, the motion to stay is hereby DENIED.

16 **IT IS SO ORDERED.**

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18 Dated: February 25, 2008

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MAXINE M. CHESNEY
United States District Judge